IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

A.O. No. 1268 of 2001
(Old No. 991/1989)

M/s Kichha Sugar Company Ltd. Kichha,
District – Nainital through its Executive Director.
....Appellant

Vs

M/s Taxmaco Ltd. Balgaria, Calcutta,
Through its Executive Director.
....Respondent

Sri V.K. Kohli learned Senior Advocate assisted by
Sri I.P.Kohli learned counsel for the appellant.
Sri Sidhartha Sah learned counsel for the respondent.

Dated: - July 18, 2006

Coram: Hon'ble P.C. Verma, J.
Hon'ble B.S. Verma, J.

This appeal has been filed by the appellant against the Judgment and order dated 6-7-1989 passed by Sri Virendra Singh, Civil Judge, Nainital dismissing the Civil Suit No. 116 of 1986 filed under Section 20 of the Arbitration Act, 1940 (***hereinafter will be referred to as the Act***).

2. The application was moved by the appellant under Section 20 of the Arbitration Act before the Civil Judge, Nainital to appoint the Arbitrator and along with the application the agreement was also filed. The agreement Clause between the parties reads as under:-

> *"Agreement that Arbitrator be appointed by the third party. The parties to an Arbitration Agreement or Arbitrators to be appointed by a person designated in the agreement either by name, or as the holder for the time being of any office or appointment."*

3. In terms of the aforesaid clause, some dispute as specified in Annexure-A and Annexure B was referred to sole arbitrator and Director National Sugar Institute, Kanpur was the sole arbitrator. Both the parties have

submitted their claim before the sole Arbitrator to Director National Sugar Institute Kanpur along with their comments in July 1980.

4. The sole Arbitrator Director National Sugar Institute Kanpur entered upon the reference and the Arbitration proceedings continues. It has been stated by the appellant that on account of attitude adopted by the respondent, the Sole Arbitrator communicated to the appellant his unwillingness to continue with the Arbitration and the Director, National Sugar Institute Kanpur stopped the functioning as Arbitrator in the midst of the proceedings.

5. After the refusal to act as Arbitrator, the Director, National Sugar Institute Kanpur filed a suit No.116 of 1986 which has been rejected on the ground that the appellant ought to have moved an application under Section 8(1) (b) as references has already been made and dismissed the suit under Section 20 of the Arbitration Act.

6. Learned counsel for the appellant submits that the appellant has the choice either to move an application under Section 8 (1) (b) or to move the application under Section 20 of the Arbitration Act and he elected to file an application under Section 20 of the Act. The argument of the learned counsel for the appellant is devoid of merits. A bare reading of Section 20 of the Act spells out that under Section 20 of the Act, the application is to be filed for making the reference (as per U.P. amendment) and the said application shall be registered as suit and the applicant shall be treated as plaintiff and the respondent shall be treated as defendant and notices shall be issued inviting the objection. After

the receipt of the objection, the court shall proceed to decide the suit and the suit is decreed by making the reference by appointment of the Arbitrator under Section 20 of the Act.

7. In the instant case, we have notices above that the reference proceedings were initiated and were continued before the sole arbitrator i.e Director, National Sugar Institute Kanpur and on account of his refusal, the vacancy accrued and for that purpose, the specific provision is made under Section 8(1)(b) of the Act.

8. The appellant has in the facts and circumstances of the case has no choice of election between the Section 8(1) (b) and Section 20 of the Act. The application could have been filed only under Section 8 (1) (b) of the Act and the application under Section 20 of the Act was not maintainable as the entire scope of Section 20 of the Act is different than that of scope of Section 8(1)(b) of the Act. Hence, the trial court has rightly held that the application under Section 20 of the Act was not maintainable and accordingly dismissed the application.

9. For the reasons recorded above, we affirm the award passed by learned Civil Judge, Nainital and dismiss the appeal. No order as to costs. The trial court has already given liberty to the appellant to file application under Section 8 (1) (b) of the Act and that is also affirmed.

(B.S. Verma, J.) **(P.C. Verma, J.)**

18-07-2006
Rajeev Dang